

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

## DARRYL WADE VICTORIAN,

**Petitioner,**

V.

**Case No. 6:18-CV-654-JDK-KNM**

## TDCJ DIRECTOR,

## Respondent.

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## **ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Darryl Wade Victorian, an inmate proceeding *pro se*, filed the above-styled and numbered petition for writ of habeas corpus. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On April 9, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 19) recommending that the petition be dismissed with prejudice as barred by the statute of limitations and lacking in merit. *Id.* at 7.

Petitioner did not file formal objections but instead filed a motion for certificate of appealability, which the Court construes as objections. Docket No. 21. Petitioner argues that the parole revocation laws in effect at the time of his conviction should have applied to his revocation. *Id.* at 1. However, as the Magistrate Judge properly concluded, under Texas law, eligibility for street time credit is controlled by the statute in effect at the time of the parole revocation. *See, e.g.*, *Rhodes v. Thaler*, 713 F.3d 264, 267 (5th Cir. 2013); *Ex parte Hernandez*, 275 S.W.3d 895, 897 (Tex. Crim. App. 2009). Petitioner also disputes Respondent’s argument that his petition is moot, but the Magistrate Judge did not recommend dismissal based upon mootness. Docket No. 19 at 2. Petitioner’s objections therefore fail.

Having made a *de novo* review of the objections raised by Petitioner to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 19) be **ADOPTED**. It is further

**ORDERED** that the above-styled application for the writ of habeas corpus is **DISMISSED WITH PREJUDICE** as lacking in merit and barred by the statute of limitations. Petitioner is **DENIED** a certificate of appealability *sua sponte*.

So **ORDERED** and **SIGNED** this 19th day of May, 2020.



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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE